

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELSA GULINO, MAYLING RALPH, PETER WILDS,  
and NIA GREENS, on behalf Of themselves and all others  
similarly situated,

**DECLARATION IN  
SUPPORT OF CITY  
BOARD'S SUPPLEMENTAL  
REMAND SUBMISSION**

Plaintiffs,  
-against-

96 Civ. 8414 (KMW)

THE BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK; and NEW  
YORK STATE EDUCATION DEPARTMENT,

Defendants.

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**EAMONN F. FOLEY** declares, pursuant to 28, U.S.C. § 1746, that the following  
is true and correct:

1. I am an Assistant Corporation Counsel in the offices of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendant the Board of Education of the City School District of the City of New York ("City Board") in the referenced action.
2. I make this declaration in support of City Board's Supplemental Reply Submission on Remand Pursuant to the Court's August 12, 2010, Order.
3. Attached hereto as Exhibit 1 is copy a Consent Order, dated August 24, 200, in Mills v. Levy, Index No. 26196/00 (Supreme Court, Kings County).

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 13, 2010  
New York, New York

  
EAMONN F. FOLEY

## **EXHIBIT 1**

At an LAS Term, Part 22 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 24<sup>th</sup> day of August, 2000

P R E S E N T:

HON. JOSEPH F. BRUNO,  
Justice.

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RICHARD P. MILLS, AS COMMISSIONER OF  
EDUCATION OF THE STATE OF NEW YORK,

Plaintiff,  
- against -

CONSENT ORDER  
Index No. 26196/00

HAROLD O. LEVY, AS CHANCELLOR OF THE  
NEW YORK CITY BOARD OF EDUCATION,  
WILLIAM THOMPSON, JR., AS PRESIDENT OF  
THE BOARD OF EDUCATION OF THE CITY  
SCHOOL DISTRICT OF THE CITY OF NEW YORK  
AND THE BOARD OF EDUCATION OF THE CITY  
SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Defendants,

-and-

UNITED FEDERATION OF TEACHERS,

Intervenor-Defendant.

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WHEREAS, Plaintiff State Education Commissioner Richard P. Mills ("Commissioner"), having moved by order to show cause for a preliminary injunction on August 1, 2000, in this action seeking to enforce an order of the Commissioner dated July 17, 2000, requiring Defendants, Chancellor Harold O. Levy, President of the Board of

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Education William C. Thompson, and the Board of Education of the City of New York (collectively referred to as "Defendants") to employ only certified teachers newly hired into vacancies in Schools Under Registration Review ("SURR schools") after September 1, 1999; and

WHEREAS, the United Federation of Teachers having been granted leave to intervene as a Defendant-intervenor in this action; and

WHEREAS, the Plaintiff having moved for and been granted a temporary restraining order on August 1, 2000; and

WHEREAS, Defendants moved to dismiss the complaint; and

WHEREAS, the parties in order to settle this action in the best interests of the children of the City of New York agree to the following;

1. By September 7, 2000, Defendants shall fill every vacancy in SURR schools in the Common Branch license area with certified teachers only.
2. After the date of this order, if the Defendants hire a certified teacher for a non-Common Branch vacancy, that teacher must be assigned first to a vacancy in a SURR school.
3. After the date of this order, Defendants shall make best efforts to assign all other newly hired certified teachers to fill vacancies in SURR schools in other than their area of certification, where appropriate, based on their educational qualifications and experience, and with the approval of the Commissioner.

4. The Commissioner shall make best efforts to identify by August 29, 2000 the schools anticipated to be removed from SURR schools status on November 1, 2000. The July 17, 2000 Commissioner's Order shall not apply to those schools.
5. Vacancies that remain in SURR schools as of September 7, 2000, in non-Common Branch license areas may be filled by an uncertified teacher holding a temporary license for the 2000-2001 school year only.
6. Vacancies arising in SURR schools after September 7, 2000, shall be filled with certified teachers within 40 school days of the vacancy. If the vacancy cannot be filled within the 40 day period, the Defendants may apply for a temporary license per the Commissioner's rules and regulations.
7. Defendants shall submit for review by the Commissioner relevant service and background information of the uncertified teachers first assigned to SURR schools subsequent to September 1, 1999, who received a temporary license and who were recommended for renomination. The Commissioner shall determine, in his discretion, which of those individuals may be permitted to remain in the SURR assignment by renewing a temporary license for the 2000-2001 school year only.
8. By April 1, 2001, Defendants must demonstrate that all vacancies covered by the Commissioner's July 17, 2000 Order shall be filled by certified teachers by September 1, 2001. A preliminary progress report shall be provided to the Court and the Commissioner by November 1, 2000.

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9. The Plaintiff withdraws the motion for a preliminary injunction, and the Defendants withdraw their cross-motion, both without prejudice, and the date for a hearing is adjourned indefinitely.
10. Upon evidence of non-compliance by Defendants, the motion for preliminary injunction may be restored upon five (5) business days written notice, and a briefing schedule and date for a hearing to determine whether to issue a preliminary injunction shall be set by the Court. Defendants preserve all rights, defenses and arguments in opposition to such motion.
11. The Court shall retain jurisdiction of this action to ensure compliance with the terms of this Order until April 1, 2002.
12. The temporary restraining order is vacated.

Eliot Spitzer, Attorney General of the  
State of New York

By: 

JUDITH T. KRAMER

Attorney for Richard P. Mills, as  
Commissioner of Education of the State of  
New York

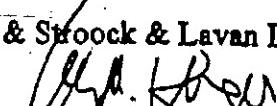
Michael D. Hess, Corporation Counsel of  
the City of New York

By: 

DANIEL McCRAY

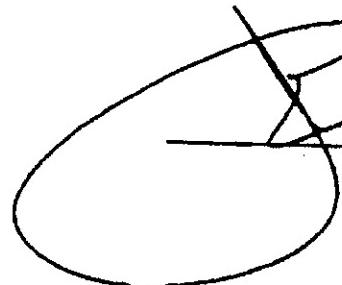
Attorney for Harold O. Levy, as  
Chancellor of the New York City Board of  
Education, et al

Stroock & Stroock & Lavan LLP

By: 

ALAN M. KLINGER

Attorney for United Federation of  
Teachers

 8/24/00  
J.S.C.  
HON. JOSEPH F. BRUNO

96 Civ. 8414 (KMW)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE BOARD OF EDUCATION OF THE CITY  
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DEPARTMENT,

Defendants.

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**DECLARATION IN SUPPORT OF CITY BOARD'S  
SUPPLEMENTAL SUBMISSION**

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***MICHAEL A. CARDODOZO***

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Tel: (212) 788-0781  
NYCLIS #: 96GL000890*